IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5453 OF 2005

Rupee Co-operative Bank Ltd. ....Petitioner

V/s.

Divisional Joint Registrar .
Co-operative Societies, .
Pune Division, Pune & Ors. ....Respondents

Mr.Kishor V. Tembe for the Petitioner.

Mr.M.H. Solkar, AGP for Respondent No.1.

Mr.S.V. Pitre for Respondent No.3.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. This Petition filed under Articles 226 and 227 of the Constitution of India impugns the order dated 13.4.2005 passed by the Divisional Joint Registrar, Co-operative Societies, Pune.

2. Such of the facts which are necessary to be cited are stated thus :-

. Respondent No.3 was an employee of the Petitioner - Bank, who was granted a housing loan in

the sum of Rs.8,00,000/- under Staff Housing Scheme and which was at the concessional rate of interest. This was some time in the year 1999. The services of the Petitioner were terminated in May, 2003. The said termination has been challenged by Respondent No.3 by filing a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960. After termination of the services of Respondent No.1, the Petitioner - Bank initiated the proceedings under Section 101 of the said Act for recovery of the outstanding amount on 6.4.2004. The concerned Assistant Registrar, Co-operative Societies by an order dated 28.9.2004 rejected the said application of the Petitioner. The said rejection was on the ground that Respondent No.3 was not a member of the Petitioner Bank and therefore Section 101 of the said Act could not have been invoked by the Petitioner. The Petitioner thereafter filed a Revision before the Divisional Joint Registrar, Co-operative Societies, Pune being Revision Application No.517 of 2004, impugning the decision of the Assistant Registrar. The said Revision Application came to be disposed of by the Divisional Joint Registrar by his order dated 13.4.2005. It is the said order, which is impugned in the present Petition.

4. I have heard Mr.Tembe, the learned counsel for the Petitioner and Mr.Pitre, the learned counsel for Respondent No.3. Mr.Tembe submitted that though the Assistant Registrar had decided the issue against the Petitioner Bank on the ground that Respondent No.3 was not a member and therefore, Section 101 of the said Act could not have been invoked. The Divisional Joint Registrar while deciding the Revision Application filed by the Petitioner, has totally glossed over the said issue and directed the Petitioner to adopt proceedings under Section 91 of the said Act for recovery of the loan amount. Mr.Tembe further submits that there is no restriction on the Petitioner Bank to invoke Section 101 of the said Act even against the persons like the Petitioner and that being a member is not prerequisite to invoke the said provisions. Mr.Tembe relies upon the order of the Division Bench of this Court dated 27.7.1998 in Writ Petition No.3153 of 1998, in which order the Division Bench observed that the provision under Section 101 of the said Act is not restricted only for recovery of dues from its members. Mr.Tembe therefore, submitted that on the application of the said order, the point of jurisdiction as to whether Section 101 can be invoked, has been decided against the Respondent No.3 and therefore, does not survive.

5. On the other hand, Mr.Pitre, the learned counsel appearing for Respondent No.3 raised various issues as regards the jurisdiction and as regards the amount claimed by the Petitioner Bank. It is contended on behalf of Respondent No.3 by Mr.Pitre that the Divisional Joint Registrar has directed the Petitioner to proceed under Section 91 of the said Act because the said Section provides for filing a dispute even against the non-members.

6. Be that as it may, ex-facie reading of the order of the Divisional Joint Registrar makes it ex-facie clear that the Revisional Authority have not dealt with the issue as regards invocation of Section 101 of the said Act by the Petitioner. The Divisional Authority has misdirected itself by directing the Petitioner to file a dispute under Section 91 of the said Act without examining the said issue. Another aspect to be considered is that Respondent No.3 has now filed an affidavit in the above Petition, raising an issue in respect of grant of the said housing loan.

7. In my view therefore, proper course of action would be to remand the matter back to the Divisional Joint Registrar to consider the Revision Application

afresh by dealing with all the issues raised by the Petitioner as well as Respondent No.3. All the contentions of the respective parties are kept open. On such remand, the Revisional Authority to decide the Revision within a period of two months from date.

8. Rule is accordingly made absolute in the aforesaid terms with parties to bear their own costs.

(R.M. SAVANT, J.)